

By Senator Bracy

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1 A bill to be entitled
2 An act relating to compensation of victims of wrongful
3 incarceration; reordering and amending s. 961.02,
4 F.S.; defining the term "violent felony"; amending s.
5 961.04, F.S.; providing that a person is disqualified
6 from receiving compensation under the Victims of
7 Wrongful Incarceration Compensation Act if, before or
8 during the person's wrongful conviction and
9 incarceration, the person was convicted of, or pled
10 guilty or nolo contendere to, any violent felony;
11 amending s. 961.06, F.S.; specifying that a wrongfully
12 incarcerated person who is released from wrongful
13 incarceration to parole or community supervision and
14 who commits a violent felony, rather than a felony law
15 violation, resulting in revocation of the parole or
16 community supervision is ineligible for compensation;
17 reenacting s. 961.03(1)(a), (2), (3), and (4), F.S.,
18 relating to determination of eligibility for
19 compensation, to incorporate the amendments made to s.
20 961.04, F.S., in references thereto; reenacting ss.
21 961.05(6), 961.055(1), and 961.056(4), F.S., relating
22 to the determination of entitlement to compensation,
23 the application for compensation for a wrongfully
24 incarcerated person and exemption from application by
25 nolle prosequi, and alternative application for
26 compensation for a wrongfully incarcerated person,
27 respectively, to incorporate the amendment made to s.
28 961.06, F.S., in references thereto; providing an
29 effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:
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33 Section 1. Section 961.02, Florida Statutes, is reordered
34 and amended to read:

35 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

36 (1) "Act" means the Victims of Wrongful Incarceration
37 Compensation Act.

38 (2) "Department" means the Department of Legal Affairs.

39 (3) "Division" means the Division of Administrative
40 Hearings.

41 (7)~~(4)~~ "Wrongfully incarcerated person" means a person
42 whose felony conviction and sentence have been vacated by a
43 court of competent jurisdiction and who is the subject of an
44 order issued by the original sentencing court pursuant to s.
45 961.03, ~~with respect to whom pursuant to the requirements of s.~~
46 ~~961.03,~~ the original sentencing court has issued its order
47 finding that the person did not commit ~~neither committed~~ the act
48 or ~~nor~~ the offense that served as the basis for the conviction
49 and incarceration and that the person did not aid, abet, or act
50 as an accomplice or accessory to a person who committed the act
51 or offense.

52 (4)~~(5)~~ "Eligible for compensation" means that a person
53 meets the definition of the term "wrongfully incarcerated
54 person" and is not disqualified from seeking compensation under
55 the criteria prescribed in s. 961.04.

56 (5)~~(6)~~ "Entitled to compensation" means that a person meets
57 the definition of the term "eligible for compensation" and
58 satisfies the application requirements prescribed in s. 961.05,
59 and may receive compensation pursuant to s. 961.06.

60 (6) "Violent felony" means a felony listed in s.
61 775.084(1)(c)1. or s. 948.06(8)(c).

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62 Section 2. Section 961.04, Florida Statutes, is amended to
63 read:

64 961.04 Eligibility for compensation for wrongful
65 incarceration.—A wrongfully incarcerated person is not eligible
66 for compensation under the act if:

67 (1) Before the person's wrongful conviction and
68 incarceration, the person was convicted of, or pled guilty or
69 nolo contendere to, regardless of adjudication, any violent
70 felony ~~offense~~, or a crime committed in another jurisdiction the
71 elements of which would constitute a violent felony in this
72 state, or a crime committed against the United States which is
73 designated a violent felony, excluding any delinquency
74 disposition;

75 (2) During the person's wrongful incarceration, the person
76 was convicted of, or pled guilty or nolo contendere to,
77 regardless of adjudication, any violent felony ~~offense~~; or

78 (3) During the person's wrongful incarceration, the person
79 was also serving a concurrent sentence for another felony for
80 which the person was not wrongfully convicted.

81 Section 3. Subsection (2) of section 961.06, Florida
82 Statutes, is amended to read:

83 961.06 Compensation for wrongful incarceration.—

84 (2) In calculating monetary compensation under paragraph
85 (1)(a), a wrongfully incarcerated person who is placed on parole
86 or community supervision while serving the sentence resulting
87 from the wrongful conviction and who commits anything less than
88 a violent felony ~~law violation~~ that results in revocation of the
89 parole or community supervision is eligible for compensation for
90 the total number of years incarcerated. A wrongfully

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91 incarcerated person who commits a violent felony ~~law violation~~
92 that results in revocation of the parole or community
93 supervision is ineligible for any compensation under subsection
94 (1).

95 Section 4. For the purpose of incorporating the amendments
96 made by this act to section 961.04, Florida Statutes, in
97 references thereto, paragraph (a) of subsection (1) and
98 subsections (2), (3), and (4) of section 961.03, Florida
99 Statutes, are reenacted to read:

100 961.03 Determination of status as a wrongfully incarcerated
101 person; determination of eligibility for compensation.—

102 (1) (a) In order to meet the definition of a "wrongfully
103 incarcerated person" and "eligible for compensation," upon entry
104 of an order, based upon exonerating evidence, vacating a
105 conviction and sentence, a person must set forth the claim of
106 wrongful incarceration under oath and with particularity by
107 filing a petition with the original sentencing court, with a
108 copy of the petition and proper notice to the prosecuting
109 authority in the underlying felony for which the person was
110 incarcerated. At a minimum, the petition must:

111 1. State that verifiable and substantial evidence of actual
112 innocence exists and state with particularity the nature and
113 significance of the verifiable and substantial evidence of
114 actual innocence; and

115 2. State that the person is not disqualified, under the
116 provisions of s. 961.04, from seeking compensation under this
117 act.

118 (2) The prosecuting authority must respond to the petition
119 within 30 days. The prosecuting authority may respond:

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120 (a) By certifying to the court that, based upon the
121 petition and verifiable and substantial evidence of actual
122 innocence, no further criminal proceedings in the case at bar
123 can or will be initiated by the prosecuting authority, that no
124 questions of fact remain as to the petitioner's wrongful
125 incarceration, and that the petitioner is not ineligible from
126 seeking compensation under the provisions of s. 961.04; or

127 (b) By contesting the nature, significance, or effect of
128 the evidence of actual innocence, the facts related to the
129 petitioner's alleged wrongful incarceration, or whether the
130 petitioner is ineligible from seeking compensation under the
131 provisions of s. 961.04.

132 (3) If the prosecuting authority responds as set forth in
133 paragraph (2)(a), the original sentencing court, based upon the
134 evidence of actual innocence, the prosecuting authority's
135 certification, and upon the court's finding that the petitioner
136 has presented clear and convincing evidence that the petitioner
137 committed neither the act nor the offense that served as the
138 basis for the conviction and incarceration, and that the
139 petitioner did not aid, abet, or act as an accomplice to a
140 person who committed the act or offense, shall certify to the
141 department that the petitioner is a wrongfully incarcerated
142 person as defined by this act. Based upon the prosecuting
143 authority's certification, the court shall also certify to the
144 department that the petitioner is eligible for compensation
145 under the provisions of s. 961.04.

146 (4) (a) If the prosecuting authority responds as set forth
147 in paragraph (2)(b), the original sentencing court shall make a
148 determination from the pleadings and supporting documentation

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149 whether, by a preponderance of the evidence, the petitioner is
150 ineligible for compensation under the provisions of s. 961.04,
151 regardless of his or her claim of wrongful incarceration. If the
152 court finds the petitioner ineligible under the provisions of s.
153 961.04, it shall dismiss the petition.

154 (b) If the prosecuting authority responds as set forth in
155 paragraph (2)(b), and the court determines that the petitioner
156 is eligible under the provisions of s. 961.04, but the
157 prosecuting authority contests the nature, significance or
158 effect of the evidence of actual innocence, or the facts related
159 to the petitioner's alleged wrongful incarceration, the court
160 shall set forth its findings and transfer the petition by
161 electronic means through the division's website to the division
162 for findings of fact and a recommended determination of whether
163 the petitioner has established that he or she is a wrongfully
164 incarcerated person who is eligible for compensation under this
165 act.

166 Section 5. For the purpose of incorporating the amendment
167 made by this act to section 961.06, Florida Statutes, in a
168 reference thereto, subsection (6) of section 961.05, Florida
169 Statutes, is reenacted to read:

170 961.05 Application for compensation for wrongful
171 incarceration; administrative expunction; determination of
172 entitlement to compensation.—

173 (6) If the department determines that a claimant meets the
174 requirements of this act, the wrongfully incarcerated person who
175 is the subject of the claim becomes entitled to compensation,
176 subject to the provisions in s. 961.06.

177 Section 6. For the purpose of incorporating the amendments

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178 made by this act to section 961.06, Florida Statutes, in
179 references thereto, subsection (1) of section 961.055, Florida
180 Statutes, is reenacted to read:

181 961.055 Application for compensation for a wrongfully
182 incarcerated person; exemption from application by nolle
183 prosequi.—

184 (1) A person alleged to be a wrongfully incarcerated person
185 who was convicted and sentenced to death on or before December
186 31, 1979, is exempt from the application provisions of ss.
187 961.03, 961.04, and 961.05 in the determination of wrongful
188 incarceration and eligibility to receive compensation pursuant
189 to s. 961.06 if:

190 (a) The Governor issues an executive order appointing a
191 special prosecutor to review the defendant's conviction; and

192 (b) The special prosecutor thereafter enters a nolle
193 prosequi for the charges for which the defendant was convicted
194 and sentenced to death.

195 Section 7. For the purpose of incorporating the amendment
196 made by this act to section 961.06, Florida Statutes, in a
197 reference thereto, subsection (4) of section 961.056, Florida
198 Statutes, is reenacted to read:

199 961.056 Alternative application for compensation for a
200 wrongfully incarcerated person.—

201 (4) If the department determines that a claimant making
202 application under this section meets the requirements of this
203 chapter, the wrongfully incarcerated person is entitled to
204 compensation under s. 961.06.

205 Section 8. This act shall take effect October 1, 2017.